

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

ENCLAVE, LLC,

Plaintiff/Counter Defendant,

v.

BANCORPSOUTH,

Defendant/Counter Claimant,

v.

JOEL SCOTT JOHNSON

Third Party Defendant.

Case No.: 2:08-CV-01535-RDP

MEMORANDUM OPINION

This case is before the court on Defendant/Counter Claimant BancorpSouth's Motion for Entry of Default (Doc. #23) and Motion for Default Judgment (Doc. #25), filed June 12, 2009. For the reasons outlined below, the Motions are due to be granted and default judgment in favor of BancorpSouth on its counterclaims against Enclave, LLC ("Enclave") and on its third party claims against Joel Scott Johnson is due to be entered.

By order, on May 4, 2009, the court set the Motion to Withdraw as Attorney for Enclave and Mr. Johnson (Doc. #18) for a hearing at 3:00 p.m. on Monday, May 11, 2009. In that order, the court ordered Mr. Johnson and a representative of Enclave to attend. Neither Mr. Johnson nor a representative of Enclave attended the hearing.

Thereafter, on May 14, 2009, the court entered a second order, resetting the hearing to June 4, 2009 at 11:30 a.m. In that order, the court again ordered Mr. Johnson and a representative of Enclave to attend. Further, the court noted that "Failure to attend the hearing by Joel Scott Johnson

and Enclave, LLC will lead to sanctions in this case up to and including dismissal of Enclave's claims and judgment being entered against them with respect to the claims of Bancorpsouth against them." (Doc. #20). The court directed the Clerk to forward a copy of that order to Enclave and Mr. Johnson at two addresses provided by counsel as well as one email address.

After receiving the order, Mr. Johnson telephoned chambers and spoke with court staff regarding the order. The law clerk indicated that he was unable to provide legal advice, but specifically told Mr. Johnson that he needed to attend the hearing as required by the order. Mr. Johnson indicated that he would indeed attend.

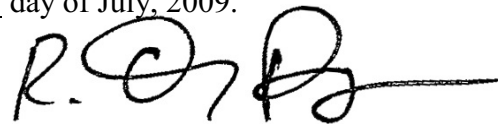
On June 4, 2009, neither Mr. Johnson nor a representative of Enclave attended the hearing, which commenced in their absence. As such, and in accordance with the hearing, the court, by order on June 4, 2004, granted the motion to withdraw and dismissed Enclave's complaint with prejudice pursuant to Federal Rule of Civil Procedure 41(b). (Doc. #21).

BancorpSouth then filed a Motion for Default Judgment on its counterclaims and third party claims on June 12, 2009. (Doc. #25). On June 22, 2009, the court entered an order setting the Motion for a hearing at 2:00 p.m. on July 9, 2009. Mr. Johnson and a representative of Enclave were again ordered to attend. The court cautioned Mr. Johnson and Enclave that "[f]ailure to appear or otherwise show cause why default judgment should not be entered against them may result in the court entering default judgment in favor of BancorpSouth on its counter claims and third party claims." (Doc. #27). Further, the court directed the Clerk to forward a copy of the order to every known address for Enclave and Mr. Johnson and ordered BancorpSouth to serve notice of its Motion to each address as well no later than June 29, 2009.

The court commenced the hearing in Mr. Johnson and a representative of Enclave's absence at 2:15 p.m. on July 9, 2009. Enclave and Mr. Johnson have, once again, failed to comply with orders of this court. Accordingly, the court finds that Enclave and Mr. Johnson are in default for failing to appear or otherwise comply with the repeated orders of this court. An entry of default against Enclave and Mr. Johnson is appropriate at this time and default judgment on BancorpSouth's counterclaims and third party claims is due to be entered under Federal Rule of Civil Procedure 55(b). Defendant/Counter Claimant BancorpSouth shall have and recover from Plaintiff/Counter Defendant Enclave, LLC and Third Party Defendant Joel Scott Johnson the amount of Two Million Six Hundred Fifty-Four Thousand Eight Hundred Eighty-One and 24/00 Dollars (\$2,654,881.24) for which amount Enclave, LLC and Joel Scott Johnson are jointly and severally liable under BancorpSouth's claims for breach of promissory note and breach of guaranty.

BancorpSouth has also agreed to dismissal without prejudice of Count III of its counterclaim seeking judicial foreclosure and has also agreed to drop its request for fees. The court will, therefore, dismiss the judicial foreclosure claim without prejudice. A separate order consistent with this memorandum opinion will be entered contemporaneously herewith.

DONE and **ORDERED** this 16th day of July, 2009.

A handwritten signature in black ink, appearing to read 'R. David Proctor', written over a horizontal line.

R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE